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No. 10-752

Supreme Court, U.S.
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In The
Supreme Court of the United States

DUSTIN DRESSNER,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Supreme Court

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

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CAPITAL CASE
QUESTIONS PRESENTED FOR REVIEW

Whether the Louisiana Supreme Court's *Batson* analysis so contravened this Court's rulings in *Miller-El v. Dretke*, 545 U.S. 231 (2005), and *Snyder v. Louisiana*, 552 U.S. 472 (2008), that it has decided an important federal question in a way that conflicts with relevant decisions of this Court.

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OPINION BELOW

The June 6, 2010 decision of the Louisiana Supreme Court is reported at 45 So. 3d 127 (La. 2010). Pet. App. 1A-78A. An appendix to the opinion of the Louisiana Supreme Court is unreported. Pet. App. 79A-198A.

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on June 6, 2010. That court denied petitioner's timely petition for rehearing on September 3, 2010. Pet. App. 199A. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

The crime for which petitioner was convicted occurred on June 6, 2002. Paul and Shannon Fasullo were at home with their two-year-old daughter, Samantha, when Dustin Dressner unexpectedly arrived at their door accompanied by Kellen Parker. Forcing their way into the residence, Dressner and Parker attacked the Fasullos with steak knives, inflicting a lethal wound to Paul Fasullo's chest and stabbing Shannon Fasullo approximately twenty times. During the incident, Shannon was able to flee into a bedroom, dial 911 and scream her address before the defendant and Parker renewed their attack on her, at which point she tossed the cordless phone

under a bed while the 911 call was still engaged. Thus, as noted by the Louisiana Supreme Court, "[t]he murderous mayhem was recorded on tape, including Shannon's screams, baby Samantha's frightened cries, and in places, defendant's own voice saying 'this bitch won't die.'" Pet. App. 8A.

On August 1, 2002, a Jefferson Parish grand jury returned an indictment charging Dressner and co-defendant Parker with one count of first degree murder, a capital offense, in violation of La. R.S. 14:30.

Voir dire began on May 17, 2004 and took three days to complete. The selection of jurors proceeded in the following manner. During the death qualification phase of jury selection, prospective jurors were questioned in six groups comprised of eighteen to twenty-six prospective jurors to allow the parties to exercise challenges for cause. After all cause challenges were made, 82 prospective jurors remained, including 16 black prospective jurors.[1]

When the regular *voir dire* commenced, the first twenty-four prospective jurors, including six black prospective jurors, were called as a panel and examined by the attorneys for the State and the defendant.

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[1] Representations made in the instant opposition are based upon the prospective jurors' responses to a juror questionnaire which required the individual prospective jurors to identify their race. The questionnaires are exhibits to the State appellate record in this matter.

After the court ruled upon challenges for cause, sixteen prospective jurors remained, including five black prospective jurors (Derrick Burns, Van Durio, Tammie Frazier, Pamela Parker, and Jakeitha Patterson). The State exercised three peremptory challenges to remove Tammie Frazier, Pamela Parker, and Jakeitha Patterson, and the defendant exercised five peremptory challenges to remove white prospective jurors.[2] At the conclusion of this first panel of the regular *voir dire*, eight jurors had been tentatively selected, including two black males (Derrick Burns and Van Durio), one white male (Edwin Vicknair), and five white females (Kristine Monie, Karen Rine, Erica Costello, Renee Kinchen, and Gwendolyn Nettles).

A second group of twenty-four prospective jurors, including seven black prospective jurors, was then called as a panel and examined by the parties. After the trial court ruled upon cause challenges, sixteen prospective jurors remained, including five black prospective jurors (Selina Paul, Robert Ratcliff, Gejoan Garrett, Joseph Woods and Gemayel Holloway). The State exercised six peremptory challenges to remove four black prospective jurors (Selina Paul, Robert Ratcliff, Gejoan Garrett and Joseph Woods) and two white prospective jurors (Martina Sakryd and Sandra Castellanos). The defendant used three

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[2] The defendant's peremptory challenges were used to remove white prospective jurors Frederick Munch, Peter Rigby, Dimiter Bocskov, Frank Hendrickson, and Katherine Werhan.

peremptory challenges including one backstrike, to remove (tentatively selected) black prospective juror Derrick Burns and white prospective jurors Bert Robles and Margaret Clawson. The resulting twelve person jury consisted of one black male (Van Durio), one white male (Edwin Vicknair) and ten white females (Kristine Monie, Karen Rine, Erica Costello, Renee Kinchen, Gwen Nettles, Gail Diket, Jessica Taylor, Versie Nicoll, Judy Barhorst and Jaelyn Burst).

Alternate juror selection commenced with the State and defense being granted two peremptory challenges to exercise in the selection of two alternate jurors. The State used one of its two additional peremptories to remove black prospective juror Gemayel Hollaway and, as the second panel of the regular *voir dire* was exhausted without any alternate jurors having been selected, an additional group of fourteen prospective jurors, including two black prospective jurors, was called. The two black prospective jurors, Terri Smith and JoAnn Humphrey, were selected as the alternate jurors.

Opening statements commenced immediately after jury selection and trial continued through May 23, 2004, on which date the jury unanimously returned a verdict of guilty of first degree murder. Trial on the penalty phase was held on May 24, 2004 and the jury unanimously returned a verdict of death, finding the offense was committed in an especially heinous, atrocious, or cruel manner, and that defendant knowingly created a risk of death or great bodily

harm to more than one person. The district court denied defendant's motion for new trial on October 21, 2004.

Dressner's conviction and sentence were affirmed by the Louisiana Supreme Court on direct appeal. *State v. Dressner*, 45 So. 3d 127 (La. 2010), *reh. denied* (La. 2010). Of significance, the court rejected the defendant's claim that the prosecution used some of its peremptory jury challenges based on race in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). Dressner now seeks a writ of certiorari to review the judgment of the Louisiana Supreme Court, centering his complaints on the prosecution's strikes of four black jurors, Tammie Frazier, Selina Paul, Robert Ratcliff, and Joseph Woods.

SUMMARY OF THE ARGUMENT

There is no merit to Dressner's contention that the Louisiana Supreme Court's analysis of his *Batson* claim conflicts with this Court's jurisprudence, or that the State's explanations for the exercise of its peremptories were insufficient and pretextual. A review of the record reveals that the trial court's rulings on the defendant's *Batson* claims were not clearly erroneous and were thus properly affirmed by the Louisiana Supreme Court.

ARGUMENT

The exercise of peremptory challenges to exclude prospective jurors on the basis of race violates the Equal Protection Clause of the Fourteenth Amendment. *Batson v. Kentucky*, 476 U.S. 79, 84 106 S. Ct. 1712, 90 L. Ed. 2d 69. In *Batson*, this Court outlined a three-step process for evaluating claims of purposeful discrimination. *Id.* at 96-98. First, the defendant must make a prima facie showing of discrimination in the selection of the jurors. *Id.* at 96-97. If so, the prosecution must offer a race-neutral basis for striking the juror in question. *Id.* at 97-98. Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination. The ultimate burden of persuasion regarding racial motivation rests with and never shifts from the opponent of the strike. *Purkett v. Elem,* 514 U.S. 765, 768, 115 S. Ct. 1769, 131 L. Ed. 2d 834 (1995) (per curiam).

"On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous." *Snyder v. Louisiana*, 552 U.S. 472, 477, 128 S. Ct. 1203, 170 L. Ed. 2d 175 (2008). This Court has noted that the trial court has a pivotal role in evaluating *Batson* claims because the third step of the *Batson* inquiry involves an evaluation of the prosecutor's credibility, and also because "race-neutral reasons for peremptory challenges often invoke a juror's demeanor (*e.g.*, nervousness, inattention), making the trial court's first hand observations of even greater importance." *Snyder v. Louisiana*, 552

U.S. 472, 128 S. Ct. 1203, 1208, 170 L. Ed. 2d 175 (2008).

I. The Louisiana Supreme Court's Opinion Comports With This Court's Opinions in *Miller-El II* and *Snyder*

First, Dressner contends that the Louisiana Supreme Court's opinion in this matter defies this Court's decisions in *Snyder* and *Miller-El v. Dretke*, 545 U.S. 231, 125 S. Ct. 2317, 162 L. Ed. 2d 196 (2005). More specifically, Dressner contends that the Louisiana Supreme Court supplied an additional reason to justify the State's exercise of a peremptory strike to remove prospective juror Tammie Frazier, ignored evidence that the State "mischaracterized" the testimony of prospective juror Selina Paul,[3] did not consider the "pro-State" character of certain race-neutral reasons as evidence of pretext, and ignored historical and statistical evidence. However, the record demonstrates that these claims do not warrant relief.

1. With regard to Tammie Frazier, the Louisiana Supreme Court correctly found that the trial court did not commit clear error in overruling Dressner's *Batson* objection. The prosecutor proffered the following race-neutral reasons for striking Ms. Frazier:

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[3] Petitioner's claims with respect to Selina Paul are addressed in Part II, Section 1 of the instant opposition.

> With regard to Ms. Frazier, she also gave conflicting responses. She put B and D on the questionnaire. B is, I'm strongly in favor, and D is, I'm generally opposed. Furthermore, she stated yesterday, if I have to, I will. Not only that, Judge, she wasn't completely honest with us when she was filling out the questionnaire, because on the questionnaire, she neglected to indicate that she herself had been arrested for drugs. I don't feel comfortable. I don't feel that she is a strong death penalty juror.

(R., Vol. 10, pp. 2276-2277).[4] The trial court overruled defendant's objections stating, "Alright. I think the reasons are race neutral reasons that the court did observe on its own."

Of significance, Ms. Frazier did in fact circle "B" and "D" in response to question number thirty-one on the juror questionnaire, indicating that she was both strongly in favor of the death penalty and generally opposed to it.[5] When questioned regarding her contradictory responses, Ms. Frazier stated, "Well, if I have to, I could impose the death sentence." (R., Vol.

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[4] As noted by the Louisiana Supreme Court, each of the prospective jurors was asked to complete a juror questionnaire which required them to disclose their opinion of capital punishment by circling responses "a" (I will always vote to impose the death penalty) through "f" (I would never vote to impose it). Pet. App. 96A.

[5] See, Juror Questionnaire of Tammie Frazier (R., Juror Questionnaires). The State did not accept any jurors who circled more than one response to Question 31.

7, p. 1545). However, as jurors are never *required* to impose a death sentence, Ms. Frazier's response supports the prosecutor's stated belief that she was not a strong death penalty juror.

Additionally, the record demonstrates that the prosecutor correctly stated that Ms. Frazier neglected to indicate on her juror questionnaire that she had been arrested on a drug charge, and only offered this information when the trial court advised the prospective jurors of the qualifications one must possess in order to serve on a jury. (R., Vol. 6, pp. 1400-1401). At that time, Ms. Frazier advised the court and the parties:

> I have a question. When I was about like – I was 29 years old, I was babysitting, and the police came in the house when I was babysitting, and they had drugs in the house, and I went to jail. I just wanted to know if that was a felony or what.

(R., Vol. 6, p. 1411). Ms. Frazier explained that she went to jail that night and to court, but ultimately was not prosecuted. (R., Vol. 6, pp. 1411-1412). Ms. Frazier's initial lack of candor as well as the fact of her drug arrest constitute valid, race-neutral reasons for the peremptory strike which are supported by the record.

While Petitioner contends that the Louisiana Supreme Court supplied additional reasons to support the State's peremptory strike, the record reflects that the Louisiana Supreme Court specifically found

that Ms. Frazier's previous arrest for a drug offense provided a valid race-neutral reason for the State's peremptory strike. Pet. App. 98A. That the Louisiana Supreme Court found Ms. Frazier's brother's incarceration would also provide a race-neutral reason for the peremptory strike indicates that it considered the totality of the circumstances in evaluating the prosecutor's proffered race-neutral reasons. Moreover, the opinion's discussion of race-neutral challenges of jurors whose family members have been in trouble with the law was relevant, by extension, to the challenge of a prospective juror who had herself been in trouble with the law. This claim has no merit.

2. Further, there is no merit to Dressner's claim that the Louisiana Supreme Court defied this Court's jurisprudence in failing to consider the "pro-State" character of certain race-neutral reasons as evidence of pretext. More specifically, Dressner contends that a juror is expressing a "pro-State" view when he indicates he would require the defendant to put on a defense if the State's case is strong, or that he would be reluctant to afford the defendant the presumption of innocence. However, the State submits that it cannot be maintained that jurors who express a reluctance or unwillingness to follow the law are expressing a view that is pro-State. Instead, such statements provide ample grounds for concluding that a prospective juror may not make a very good juror.

3. Finally, there is no merit to Petitioner's claim that the Louisiana Supreme Court ignored historical

and statistical evidence of discrimination rendering it impossible to prove discriminatory intent where a prosecutor gives a race-neutral explanation for a peremptory strike. Indeed, the Louisiana Supreme Court specifically noted statistical evidence regarding the state's exercise of peremptory challenges in the instant case, stating:

> Notwithstanding the judge's apparent half-hearted finding of a pattern in the State's exercise of its peremptory challenges mid-stream in jury selection, finding the defense met its burden of establishing a prima facie showing under step one of *Batson* is borne out at the conclusion of jury selection. When the first twelve jurors had been chosen, the State used seven out of nine peremptory strikes against black jurors, or roughly 77% which clearly supports the district judge's finding the defense had established a pattern under *Batson's* first step.

Pet. App. 91A, fn.8.

Petitioner also contends that the Louisiana Supreme Court erred in failing to consider an alleged history of race discrimination by the Jefferson Parish District Attorney's Office, referring to a document attached as Exhibit A to his motion for new trial entitled "Blackstrikes." Pet. App. 20.[6] However, this document was not proffered to the trial court during

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[6] (R., pp. 905-909).

the jury selection process, nor were there any representations made by defense counsel during the trial in this matter concerning a "history of discrimination" by either the District Attorney's Office or the prosecutors involved in the trial in this matter. As the defendant did not advance these arguments to the trial court at the time of his *Batson* objections in support of his burden of proving purposeful discrimination on the part of the State, it is the State's position that they are not properly considered on appeal.[7]

Further, the Louisiana Supreme Court found no racial discrimination tainted jury selection in the instant case, notwithstanding any asserted historical precedent in Jefferson Parish to the contrary. Pet. App. 134A.

II. The Louisiana Supreme Court Properly Affirmed the Trial Court's Ruling Denying Petitioner's *Batson* Challenges.

Petitioner also contends that the State's explanations for its peremptories were insufficient and pretextual. Herein, petitioner centers his claim on the prosecution's strikes of three black prospective jurors, Selina Paul, Robert Ratcliff and Joseph Woods. However, the Louisiana Supreme Court properly

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[7] On appeal, the Louisiana Supreme Court noted that at the hearing on the motion for new trial, the prosecutor referred to the document as a "sham of a study by the Louisiana Crisis Assistance Center." Pet. App. 134A.

found that the State provided valid, race-neutral reasons for peremptorily striking these prospective jurors and that no relief was warranted. Moreover, reversal is not warranted as review of the record reveals that the trial court did not commit clear error in overruling Petitioner's objections to the State's peremptory strikes.

1. With respect to prospective juror Selina Paul, Dressner contends that the prosecutor's proffered race-neutral reasons are unsupported by the record, and/or do not survive comparative analysis with the responses of other jurors. Dressner also contends that the Louisiana Supreme Court erred in rejecting his claim that the fact that at least one of the prosecutor's reasons was not supported by the record was evidence of discriminatory intent. However, the failure of one race-neutral reason does not invalidate others, properly found. *Rice v. Collins*, 546 U.S. 333, 340-342, 126 S. Ct. 969, 163 L. Ed. 2d 824 (2006).

The prosecutor provided the following race-neutral reasons for his strike of Ms. Paul:

> With regard to Ms. Paul, Judge, she circled "D" on the questionnaire, and that question – I mean that response is, "I am generally opposed to the death penalty." In response to questioning by defense counsel yesterday, during the Witherspoon process, she answered definitely, and this answer was emphatic, definitely, I cannot consider mercy, when they were going through the mitigating circumstances. Furthermore, when I was

> giving the examples in my voir dire, she seemed to be confused with regard to intoxication and specific intent. Furthermore, Paul Fleming was questioning in this last panel. She volunteered information. Not once during my voir dire or any other questioning that I asked her, did she volunteer any information.

(R., Vol. 10, pp. 2448-2449). While the record admittedly does not support the prosecutor's statement that Ms. Paul said she could not consider mercy, the prosecutor's reasons were provided at the conclusion of the second round of the general *voir dire* and after six rounds of *Witherspoon voir dire*. Under these circumstances, the fact that the prosecutor confused one prospective juror's response is neither surprising, nor does it support the conclusion that the strike actually was based on race. Further, the Louisiana Supreme Court noted that Ms. Paul did appear to have difficulty grasping some of the legal concepts conveyed in *voir dire* and found that the remaining race-neutral reasons supported the strike. Pet. App. 109A-112A.

There is no merit to defendant's allegation that the State's claim that it struck Ms. Paul because she circled the letter "D," indicating she generally opposed the death penalty, does not survive comparative analysis. While the prosecutor accepted white prospective jurors Karen Rine, Renee Kinchen and Versie Nicolls who selected "D" in response to Question 31, they did not display confusion regarding intoxication

and intent. The State did strike a white prospective juror (Martina Sakryd) who picked "D," and could not have struck every juror who picked "D" without exhausting the State's peremptory challenges midway through the second round of *voir dire* at a point when the defendant had four remaining peremptories and could have seated objectionable jurors including a prospective juror (Thanh Tran) whose response to the questionnaire indicated he was "strongly opposed to the death penalty and would have a difficult time voting to impose it, regardless of the facts or circumstances."

2. Dressner also contends that the State's proffered reasons for striking Robert Ratcliff relied upon gender in violation of the Equal Protection Clause of the Fourteenth Amendment, citing *J.E.B. v. Alabama*, 511 U.S. 127, 140, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994). However, the Louisiana Supreme Court properly found that this claim was not properly before it because Petitioner failed to raise an objection based on gender in the trial court. Pet. App. 119A.

Even if this claim had been raised in the trial court and properly presented to the Louisiana Supreme Court on appeal, it would be meritless. The prosecutor's proffered reasons for striking Mr. Ratcliff were as follows:

> Okay. I'm striking Mr. Ratcliff, 1) because he did give me responses of some concern, week [sic] on the death penalty. Second of all, he is

> a deacon in his church . . . He is a deacon in his church. During his questioning, he reflects that he works with kids in the Jefferson Parish School System, Judge. Both Mr. Rowan and I got the impression that he would be sympathetic to the defendant, given that the defendant is a young male. And by all indications, the defense is going one, intoxication in guilt; two, they've put everybody on notice through voir dire that they intend to bring intoxication and mental defect in at the penalty phase. Given this position with regard to one being a deacon and highly involved with children, we think that he's week [sic] on the death penalty because he's going to be more into rehabilitation that he would be able to punish. Third, Your Honor, when [defense counsel] asked him what church he was a deacon in, he said Jesus is Lord Evangelical Ministries. Such churches opt to seek out at risk people . . . And try to work with them and try to convert them to their faith and bring them into their fold. For all these reasons, we think that it's highly likely that he won't vote for the death penalty. And then on top of that, his response to the Fifth Amendment, he had a problem in potentially following the law.

(R., Vol. 10, pp. 2459-2460). Read in context, the prosecutor characterized the defendant as a young man while explaining why the fact that the prospective juror worked with children in the school system factored into his decision to strike the juror. The fact that the defense did not raise a gender based

challenge in response to this remark is further evidence that the parties understood the remark in this context. The prosecutor did not impermissibly strike Mr. Ratcliff because of his gender.

3. Finally, Dressner contends that the State's reasons for striking prospective juror Joseph Woods were pretextual and insufficient. This claim likewise merits no relief. The prosecutor offered several race-neutral reasons for striking Joseph Woods:

> Judge, when talking about the Fifth Amendment privilege, and his response to my question was – we're talking about whether or not the defense decides to present evidence and/or whether or not he would require the defendant to testify. He said, I have a son that is right about the defendant's age, and we've got some real concerns there. We feel that he would be highly sympathetic to the defendant given that the defendant is approximately the same age as his son. Furthermore, for similar reasons given by the defense in striking Mr. Burns from the first panel, his language, he might not hold it against him, but – and I think that eventually I've got some concerns. The greater concern is that he might identify with the defendant. He also circled D – he also circled C, which puts him right in the middle.

(R., Vol. 10, p. 2472). The trial court noted that these were "valid reasons that this Court has independently witnessed." *Id.*

Of significance, the record provides ample support for the State's peremptory strike of Mr. Woods. In response to Question 31 on the Juror Questionnaire, Mr. Woods circled "D," indicating his general opposition to the death penalty, and also "C," indicating he was generally in favor of the death penalty.[8] The State did not accept any jurors who selected more than one response to Question 31 on the juror questionnaire, and only accepted three jurors who marked "D," indicating their general opposition to the death penalty.[9] Also the record reflects that Mr. Woods wanted to hear from the defendant, "Cause I have a son about his age, old like he is. I know I like my son. I'm pretty sure other people like their son too." (R., Vol. 10, p. 2337). Mr. Woods repeated this statement a few moments later. (R., Vol. 10, p. 2337). These comments reflect that Mr. Woods identified the defendant with his own son of approximately the same age. It is readily apparent that the State would seek to excuse a prospective juror who explicitly compared a criminal defendant in a capital case to the juror's own son.

While the defendant contends that the State failed to strike other prospective jurors with children near in age to the defendant, he fails to identify any other juror who referenced his own child when speaking about the defendant. This claim does not warrant relief.

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[8] (R., Juror Questionnaire).

[9] (R., Juror Questionnaires).

III. The Louisiana Supreme Court's Review of the Defense's Peremptory Strike Does Not Reinforce a Double Standard.

Of significance, there is no merit that the trial court scrutinized the defendant's peremptory strike of white prospective juror Jaelyn Burst more carefully than the State's strikes. Instead, the record reflects that when asked to provide gender neutral reasons for striking Ms. Burst, defense counsel noted that "his colleague" noted that she tended to agree with the prosecutor when he was speaking and that she had identified herself on the Juror Questionnaire as a Christian and a Republican. (R., Vol. 10, pp. 2475-2477). However, the Question 28 on the Juror Questionnaire actually asked the prospective jurors to indicate whether they were married and to provide information concerning **their spouse** including political party and religious affiliation.[10] The trial court appeared to recall that the prospective jurors were not requested to state their own religion and political affiliation, stating, "Is that her questionnaire? May I see it. I think [that] wasn't the question – you know that, right?" (R., Vol. 10, pp. 2475-2477). Defense counsel stated, "Yes, sir." *Id.* Then defense counsel stated,

> [The prosecutor] has a way of endearing himself. He's a great looking guy, endearing himself to the female jurors – . . . and I

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[10] (R., Juror Questionnaires).

> noticed it. I noticed her – I think she was nodding with Mr. Mary and she sort of was in his corner. We believe she is pro State and has endeared herself to Mr. Mary.

Id. The trial court granted the State's objection, having found the defendant's demeanor based objection to be unsupported. The State submits that Dressner's demeanor based reason was not gender neutral as it explicitly invoked Ms. Burst's gender as a basis for striking her.

Of significance, the Louisiana Supreme Court found that, assuming *arguendo* the trial court erred in denying defendant's peremptory challenge of Burst, his claim in this regard failed on the merits in light of this Court's decision in *Rivera v. Illinois*, ___ U.S. ___, 129 S. Ct. 1446, 173, L. Ed. 2d 320 (2009) (Loss of a peremptory challenge due to a state court's good faith error not a matter of federal constitutional concern where defendant tried before a qualified jury composed of individuals not challengeable for cause.) Pet. App. 149 A. The fact that the Louisiana Supreme Court also noted that defense counsel's articulation regarding Burst was "decidedly weak" does not support the conclusion that it reviewed the defendant's peremptory challenge with greater scrutiny than the State's. *Id.* This claim has no merit.

CONCLUSION

The petitioner has failed to show that any of the issues raised herein necessitate the granting of certiorari. The State of Louisiana requests that, for the foregoing reasons, the petition for writ of certiorari be denied.

Respectfully submitted,

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